

Amendment No. 1 to HB1163

**Buck
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1537

House Bill No. 1163*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Title 68, Chapter 211 is amended to add the following language as a new, appropriately designated part.

§ 68-211-1101 This act shall be known and may be cited as the “Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act”.

§ 68-211-1102 As used in this part, unless the context otherwise requires:

(1) “Brand” means symbols, words, or marks that identify a covered device, rather than any of its components.

(2) “Collect” or “collection” means to physically pick up a covered device at a household or to facilitate the drop-off of a covered device at a collection site or event as described in the manufacturer’s recovery plan.

(3) “Consumer” means any occupant of a single detached dwelling unit or a single unit of a multiple dwelling unit (a household) who has used a covered device primarily for personal or home business use.

(4) “Covered device” means any computing, or display device, including a desktop or notebook computer, or computer monitor; but does not include a television (including a cathode ray tube or flat panel based television), a part of a motor vehicle, a personal digital assistant (PDA), a telephone, or a medical device that contains a video display device.

(5) “Department” means the department of environment and conservation.

(6) “Manufacturer” means any person:

(A) who manufactures or manufactured covered devices under a brand that it owns or owned or is or was licensed to use, other than a license to manufacture covered devices for delivery exclusively to or at the order of the licensor;

(B) who sells or sold covered devices manufactured by others under a brand that the seller owns or owned or is or was licensed to use, other than a license to manufacture covered devices for delivery exclusively to or at the order of the licensor;

(C) who manufactures or manufactured covered devices without affixing a brand;

(D) who manufactures or manufactured covered devices to which it affixes or affixed a brand that it neither owns or owned nor is or was licensed to use; or

(E) for whose account covered devices, manufactured outside the United States, are or were imported into the United States, provided, however, if at the time such covered devices are or were imported into the United States, another person has offered to collect such covered devices under a recovery plan pursuant to section 68-211-1104(c), then this clause (E) shall not apply.

(7) "Person" means any individual, business entity, partnership, limited liability company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation or public authority.

(8) "Personal digital assistant" means a hand-held computing device with a screen size of four inches or less.

(9) "Recover" means to reuse, recycle, or dispose; and "recoverer" means a person or entity that reuses, recycles, or disposes.

(10) "Retail sales" means sales of products through sales outlets, via the Internet, mail order or any other means, whether or not the seller has a physical presence in this state. Sales include sales of new, used, refurbished and other products.

(11) "Retailer" means a person who owns or operates a business that sells covered devices to a consumer, including through sales outlets, catalogs or the Internet, whether or not the seller has a physical presence in this state.

(12) "Sell" or "sale" means any transfer for consideration of title including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other similar electronic means, but does not mean leases.

(13) "Telephone" means an instrument utilized by a consumer to transmit and receive voice messages by a public utility and cellular radio telephone instruments.

(14) "Television" means any telecommunication system device that can receive moving pictures and sound broadcast over a distance, and includes a television tuner. Display devices that are peripheral to a computer but nevertheless contain a television tuner are considered televisions.

§ 68-211-1103

The collection and recovery provisions of this Act apply to covered devices used and returned by consumers in this state.

§ 68-211-1104

(a) No manufacturer shall sell or offer for sale a covered device in this state unless the manufacturer has adopted and is implementing a recovery plan.

(b) No manufacturer shall sell or offer for sale any covered device in this state unless the covered device is labeled with the manufacturer's brand. The label shall be permanently affixed and readily visible.

(c) No manufacturer shall sell or offer for sale any covered device in this state unless the manufacturer has a recovery plan under which the manufacturer offers to

collect from a consumer and recover each covered device that is labeled with the manufacturer's brand at no charge to the consumer.

(d)

(1) The recovery plan must offer covered device collection services that are reasonably convenient and available, and designed to meet the collection needs of consumers in the state.

(2) The following is a nonexclusive list of systems that can be used, alone or together, to meet the collection requirements of this sub section:

(A) Mail-back systems: the manufacturer or its designee may offer a system in which the consumer can return an end-of-life covered device through the mail or common carrier shipment;

(B) Physical collection sites: the manufacturer or its designee may keep open and staffed physical collection site(s) at which consumers may return end-of-life covered devices.

(C) Collection events: the manufacturer or its designee may hold collection event(s) at which consumers may return end-of-life covered devices

(3) Collection services may use existing collection and consolidation infrastructure for handling covered devices, and may include electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, or other suitable operations.

(e) Manufacturers must offer collection under their recovery plan at no charge to the consumer.

(f) Each manufacturer shall, as part of its recovery plan, inform consumers in this state about where and how to return and recover covered devices. Each manufacturer shall include collection and recovery information on its website, shall provide such

information to the department, and may also include such information in the covered device's packaging or accompanying the sale of the covered device.

(g) Each manufacturer shall annually report to the department on or before March 1, beginning March 1, 2009, the weight of covered devices collected and recovered during the previous calendar year. The report also shall include documentation verifying proper collection and recovery of such material compliant with the sound environmental management provisions under section 68-211-1108.

(h) Manufacturers shall not be liable in any way for data or other information that a consumer may leave on a covered device that is collected or recovered.

(i) Where more than one person is within the definition of manufacturer of a brand of a covered device under section 68-211-1102, any one or more such persons may assume responsibility for and satisfy the obligations of a manufacturer under this title with respect to covered devices bearing that brand. In the event that no person assumes responsibility for and satisfies the obligations of a manufacturer under this title with respect to covered devices bearing that brand, the department may consider any one or more persons within such definition to be the manufacturer of that brand.

(j) Nothing in this title is intended to exempt any person from liability he or she would otherwise have under applicable law.

§ 68-211-1105

(a) No retailer shall knowingly or willfully sell or offer for sale a covered device in this state unless the covered device has a proper manufacturer label and such device's manufacturer is included on the state list of manufacturers with recovery plans.

(b) Retailers shall not be liable in any way for data or other information that a consumer may leave on a covered device that is collected or recovered.

§ 68-211-1106

(a) The department shall educate consumers about collection and recovery of covered devices.

(b) The department shall host, or designate another person to host, a website for consumers about recovery of covered devices, with information about and links to manufacturers' collection and recovery information, including their recovery plans, and information about and links to information for covered devices, including information about collection events, collection sites, and community recycling programs. Inclusion on the state's website is not a determination by the state that the manufacturer's recovery plan or actual recovery are in compliance with this Act or other laws.

(c)

(1) The commissioner of environment and conservation shall administer and enforce the provisions of this part.

(2) The commissioner may:

(A) Issue orders for correction to enforce the provisions of this part and rules and regulations promulgated pursuant to this part in the manner specified in § 68-211-112 and such orders may be reviewed in the manner specified in § 68-211-113;

(B) Institute proceedings to enjoin violations of this part, rules and regulations promulgated pursuant to this part or orders issued pursuant to subsection (ii)(2) in the manner specified in § 68-211-115; and

(C) Assess civil penalties against any person who violates or fails to comply with the provisions of this part or rules and regulations promulgated pursuant to this part in the manner specified in § 68-211-117.

(d) Financial or proprietary information submitted to the department in response to an audit or inspection conducted pursuant to this Act shall be exempt from public disclosure.

(e) The department shall compile the information from manufacturers and issue a report to the General Assembly by June 1 each year, beginning June 1, 2009.

(f) The department may adopt such rules and regulations as are necessary to implement the provisions of this Act.

(g) The department does not have the authority to assess any fees, including an advanced recycling fee, registration fee, or other fee, on consumers, manufacturers, retailers, or recoverers for collection or recovery of covered devices.

§ 68-211-1107

(a) Consumers shall be solely responsible for any data or other information that may be on a covered device that is collected or recovered.

(b) Consumers also are encouraged to learn about proper recovery of their end-of-life covered devices by visiting the department's and manufacturers' websites.

§ 68-211-1108

(a) All covered devices collected pursuant to this Act shall be recovered in a manner that is in compliance with all applicable federal, state, and local laws and requirements and with the Institute of Scrap Recycling Industries, Inc.'s Electronics Recycling Operating Practices.

(b) The department shall adopt by reference the Institute of Scrap Recycling Industries, Inc.'s Electronics Recycling Operating Practices as standards for recovery in an environmentally sound manner that are protective of worker health and safety.

SECTION 2. This Act shall be pre-empted if a federal law or a combination of federal laws takes effect that establishes a national program for the collection and recycling of covered devices that substantially meets the intent of this Act.

SECTION 3. This act shall become effective January 1, 2008, the public welfare requiring it.